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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,511	02/16/2005	Sang-Soo Kwak	WON-0003	9215
7590 02/15/2007 Jane Massey Licata Kathleen A Tyrrell Licata & Tyrrell 66 East Main Street Marlton, NJ 08053			EXAMINER MARTIN, PAUL C	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 02/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/519,511

Applicant(s)

KWAK ET AL.

Examiner

Paul C. Martin

Art Unit

1657

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3 and 7-9.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached Continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Claims 1-3 and 7-9 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Byth et al. (2000) in view of Ichinose et al. (1995) for reasons of record set forth in the Prior Office Actions (slightly altered to take into account the Applicant's amendment to the Claims filed 01/16/07).

The Applicants argument filed 01/16/07 have been fully considered but they are not deemed to be persuasive.

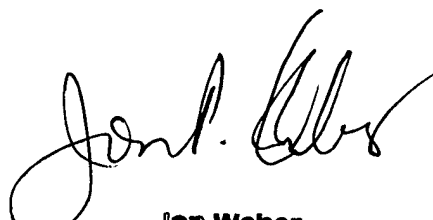
The Applicant argues that the instant invention has the advantage that after 1 hour of TTC treatment extracellular formazan in the medium was hardly detectable while after 4.5-5.5 hours of TTC treatment, the amount of extracellular formazan accurately reflects on the amount of formed formazan inside cells (Remarks, Pg. 8, Lines 10-24).

The Applicant argues that the new limitations of amended Claim 1, (b) the treatment of cultured photomixotrophic cells with TTC for a time period of 4.5 to 5.5 hours, (c) the addition of ethanol to the remaining cells and reacting for 0.5 to 2 hours, and (g) determining the activity of candidates for plant growth regulators based on the optical density of step (f), are sufficient to non-obviate the instant invention over the combined references of Byth et al. and Ichinose et al. which involves the treatment with TTC for 3 hours and ethanol for 16 hours and that Ichinose et al. teaches culturing with herbicide for 5 days prior to measurement of the chlorophyll content (Remarks, Pg. 9, Lines 5-15).

The Applicant's arguments are not found to be persuasive for the following reasons, that the Applicants have discovered that the treatment time of reacting a substrate with an agent is proportional to the amount of product formed thereof, is not novel. The fact that the Applicant's show that no product is present after 1 hour of treatment vs. 5 hours of treatment, does not non-obviate the method of Byth et al. which teaches treatment for 3 hours.

The proportional relationship between time and product formed will still be maintained, and such a relationship and the result effective adjustment of incubation times would have been within the purview of one of ordinary skill in the art at the time of the invention.

Similarly, the Applicant's shortened adjustment of the ethanol treatment time would not non-obviate the treatment time as taught by Byth et al. as one of skill in the art would have recognized that if the proportionality between time and extracted product were determined, one could either totally extract all of the formed product by treatment in ethanol for a long time period or utilize a shortened time period and extract only a portion of product. The argument against Ichinose et al. regarding the treatment time is not relevant per se as the rejection is based upon combination of both references. The determination of the activity of potential plant growth regulators based upon the measured OD would have been obvious to one of ordinary skill in the art as the next logical step once one has measured the OD of a treatment group and can be seen in Figure 2, Pg. 343 of the Byth et al. reference.



Jon Weber
Supervisory Patent Examiner